

**DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS: 98-0577
Indiana Adjusted Gross Income Tax
For 1995**

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ISSUE

I. Net Operating Losses – Adjusted Gross Income Tax.

Authority: IC 6-8.1-5-1(b).

Taxpayer repeats her argument that she did not owe Indiana adjusted gross income tax for 1995 because she was entitled to carry forward a net operating loss from previous years.

STATEMENT OF FACTS

The Department of Revenue (Department) determined that taxpayer owed a delinquent state income tax liability for 1995, offset a year 2000 refund otherwise owed taxpayer, and sent taxpayer a notice to that effect. Taxpayer challenged the decision. Taxpayer did so on the ground that a net operating loss (NOL) – carried forward from 1987 – more than compensated for any 1995 tax liability.

Following taxpayer's initial protest, the Department issued a Letter of Findings (LOF) denying taxpayer's claim. Taxpayer again protested and supplied additional information purporting to verify the net operating loss. This Supplemental Letter of Findings results.

DISCUSSION

I. Net Operating Losses – Adjusted Gross Income Tax.

According to taxpayer, her farm business incurred a net operating loss of approximately \$200,000 in 1987. Taxpayer then carried forward the 1987 loss to 1988 entirely offsetting taxpayer's income received during that year. Taxpayer carried forward the "unused" portion of the loss to 1989 thereby offsetting the 1989 income. Because the original loss was substantial and the personal income received during each following year was comparatively small, the original net operating loss was carried forward again and again offsetting each subsequent year's income. Taxpayer repeated this process through 1995 after which nothing remained of the original \$200,000 loss.

The Department's only challenge was to taxpayer's 1995 calculation. The Department requested documentation substantiating the source and nature of the 1987 loss. Taxpayer's representative supplied copies of the underlying federal return and copies of the taxpayer's state returns. The Department remained unsatisfied with the documentation supplied and the explanations offered.

The original LOF agreed with the Department's original decision. As stated in the original LOF, "What is missing is any sort of explanation as to the manner in which the \$200,000 was originally incurred or how that loss was calculated."

After the LOF was issued, taxpayer supplied information indicating that the original losses were attributable to periodic crop losses caused by flooding. Taxpayer explained that crop insurance paid for some but not all of the losses.

IC 6-8.1-5-1(b) states that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has met her burden of establishing the factual predicate upon which the original NOL was claimed.

FINDING

Taxpayer's protest is sustained.